Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	
Pertaining to	)	CC Docket No. 94-54
Commercial Mobile Radio Services	)	

PETITION FOR RECONSIDERATION

Connecticut Telephone and Communication Systems, Inc. ("Connecticut Telephone"), pursuant to § 1.429 of the Commission's Rules, hereby petitions for reconsideration of the *First Report and Order*, FCC 96-263 (July 12, 1996) ("*First R&O*"), in the above-captioned proceeding. Connecticut Telephone has a great deal of concern that the Commission's decision to sunset the resale obligation for certain Commercial Mobile Radio Service ("CMRS") providers in approximately five years culminates a series of recent Commission decisions that negatively impact small business, in direct contravention of Congress' mandate in the Telecommunications Act of 1996. Sunset of the resale rule will impose enormous costs on wireless resellers, many of whom are small businesses. The Commission simply ignores these costs in the *First R&O*. In addition, the *First R&O* fails to consider the anticompetitive realities of the wireless marketplace. Upon reconsideration, the Commission should rescind its decision to sunset the resale rule.

I. STATEMENT OF INTEREST

Connecticut Telephone, as a reseller of cellular and other wireless services in the state of Connecticut since it was incorporated in 1985, and, more recently, as a reseller of wireline services, is substantially invested in the continued availability of resale in CMRS markets, and, therefore, has had a significant interest in this proceeding.[1] The company began by reselling bulk

[1] *See, e.g.*, Comments of Connecticut Telephone and Communication Systems, Inc., CC Docket No. 94-54 (June 14, 1995); Reply Comments of Connecticut Telephone and

cellular service purchased from Springwich Cellular Limited Partnership, an affiliate of Southern New England Telephone, the wireline cellular licensee. Two years later, Connecticut Telephone began purchasing bulk cellular service from Metro Mobile,[2] the non-wireline cellular licensee. The company has since grown to be the largest independent cellular service provider in Connecticut, servicing more than 45,000 subscribers.

Moreover, the company has recently expanded its service offerings to offer local and domestic long distance wireline services and, soon, international services. The company's growth is due in large part to its commitment to service. Connecticut Telephone has invested heavily in sales, marketing and service operations that are better able to respond to subscribers' needs than is typical of most facilities-based operators. Proof of this can be found in the fact that the churn rate of facilities-based carriers is much higher than Connecticut Telephone's.

The company's success, however, has not come easily. The wholesale rate plans of the cellular carriers are typically structured in a manner that makes it difficult for small resellers to succeed. High deposit requirements, uneven tiered pricing plans, and delayed access to new features are but a small sampling of the barriers thrown in the way of resellers by facilities-based carriers intent on minimizing the size and number of wireless resellers. Indeed, the next largest independent competitor to Connecticut Telephone has a subscriber base that is less than approximately one tenth that of Connecticut Telephone's.

Connecticut Telephone's experiences have hardly been unique. Despite the diligent efforts of many resellers across the nation, there are currently only a handful of successful wireless

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Communication Systems, Inc., CC Docket No. 94-54 (July 14, 1995).

[2] Metro Mobile was acquired by Bell Atlantic in 1992. Bell Atlantic offers cellular service in Connecticut through its subsidiary Bell Atlantic Metro Mobile.

resellers who have managed to survive the apparent efforts of most facilities-based carriers to limit their ability to compete. In addition to facing inequitable rate structures, pricing, and terms and conditions of service, Connecticut Telephone and other resellers have suffered facilities-based carrier intransigence in negotiating resale agreements and agreements to allow the interconnection of reseller switches to the carrier's networks. These experiences bolster reseller concerns that in the absence of a rule prohibiting restrictions on resale, such restrictions are inevitable and will severely curtail the growth of the wireless resale industry and the associated benefits to small businesses and consumers.

II. ARGUMENT

In the *First R&O*, the Commission extends its longstanding policy prohibiting restrictions on the resale of cellular services to broadband PCS and select SMR services. The Commission bases its decision on the tremendous benefits that unrestricted resale will afford newly-emergent CMRS markets, including increased competition, reduced prices, stimulated demand, expanded innovation and reduced headstart advantages for incumbent providers. Despite these benefits, the Commission also decides in the *First R&O* to sunset the resale rule as it applies to CMRS providers five years after issuance of currently allocated broadband PCS licenses. The Commission withdraws the resale rule under the assumption that wireless markets will achieve perfect competition in five years,[3] obviating the need for an explicit resale policy since market

[3] The Commission explains in the *First R&O* that, until markets exhibit "perfect competition," carriers will have market power sufficient to enable them to impose unreasonable restrictions on resale. *First R&O* at ¶ 17. The Commission has long recognized that a policy prohibiting restrictions on resale counteracts such market power. *See, e.g., Resale and Shared Use of Common Carrier Domestic Public Switched Network Services,* 83 FCC 2d 167, 174-75 (1980) ("*Resale of Switched Services*"), *recon. denied,* 86 FCC 2d 820 (1981) (resale rule is needed to reduce systematic price discrimination exercised by firms with market power); *Notice of Proposed Rulemaking and Order in the Matter of Petitions for Rulemaking Concerning*

forces alone will dictate that carriers resell their services.

The Commission's decision to sunset the resale rule is based on hollow assumptions that ignore mountains of conflicting evidence. First, the Commission skews its cost-benefit analysis by ignoring the substantial cost to small business of sunsetting the resale rule. In addition, the *First R&O* unreasonably concludes that the costs of extending the resale rule outweigh the benefits without identifying a single cost imposed by the rule. Second, the foundation for the Commission's decision lies in the *First R&O*'s assumption of perfect competition in wireless markets five years from now. This assumption ignores data -- some of which has been cited by the Commission in other proceedings -- which indicate that telecommunications markets, including the wireless market, continue to be dominated by a few large carriers.

A. The *First R&O* Overestimates the Costs of the Resale Rule and Underestimates Its Benefits

The *First R&O*'s conclusion that the costs of retaining the resale rule outweigh the benefits is arbitrary, capricious and unsupported by the record. First, the Commission fails to identify a single cost associated with retention of the rule. Second, the Commission ignores the substantial costs incurred by resellers and small business as a result of sunsetting the rule. On the basis of costs and benefits alone, the Commission should recind its decision to sunset the resale rule.

The benefits of the resale rule are enormous. In the *First R&O*, the Commission acknowledges that:

> prohibiting restrictions on resale confers important public benefits in markets that are less than fully competitive. First, ... prohibiting resale restrictions may reduce the likelihood of systematic price discrimination and cartel behavior. Second, in the wireline context the resale rule has been found to promote the public interest by: (1) encouraging competitive

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Proposed Changes to the Commission's Cellular Resale Policies, 6 FCC Rcd 1719, 1720-22 (1991) (resale rule is required to counteract market power derived from headstart advantage).

pricing; (2) discouraging unjust, unreasonable, and unreasonably discriminatory carrier practices; (3) reducing the need for detailed regulatory intervention and the administrative expenditures and potential for market distortions that may accompany such intervention; (4) promoting innovation and the efficient deployment and use of telecommunications facilities; (5) improving carrier management and marketing; (6) generating increased research and development; and (7) positively affecting the growth of the market for telecommunications services. Third, we have recognized the public interest benefits of resale in the wireless context.... In particular, we have recognized that resale of wireless services can speed the development of competition by permitting new entrants to begin offering service to the public before they have built out their facilities.[4]

This vast array of public benefits can be provided by the resale rule at almost no cost.[5] In fact, the *First R&O* identifies only one cost associated with the resale rule -- unidentified administrative costs -- and even it is misapprehended.[6] The Commission has acknowledged from the inception of the resale rule that the rule actually reduces the administrative costs of enforcing the Communications Act.[7] As recognized in the *Resale and Shared Use Order*, a blanket resale rule

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[4] *First R&O* at ¶ 10 (footnotes omitted); *see also Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261, 298-303 (1976) ("*Resale and Shared Use Order*"), *amended on recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom., AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 99 S.Ct. 213 (1978); *Resale of Switched Services*, 83 FCC 2d at 172, 174-182.

[5] In other proceedings, the Commission has been at a loss to identify any costs associated with a prohibition on resale restrictions:

> We are unaware of any public detriment flowing from [unrestricted resale of MCI's and SPCC's PSN services]. Furthermore, the experience of the past ... indicates that the opening of ... private line services to resale and sharing has not produced any harmful effects on the company or the public at large. ...[M]oreover, no party, including AT&T, argues that there would be any harm to the public interest as a result of resale and sharing [of domestic PSN services.]

Resale of Switched Services, 83 FCC 2d at 172.

[6] *First R&O* at ¶ 14.

[7] *Resale and Shared Use Order*, 60 FCC 2d at 302 (the elimination of restrictions on resale and sharing will result in "a reduction in the public resources devoted to enforcement of Sections 201(b) and 202(a)" of the Act).

confers significant efficiency and cost-saving benefits by deflecting carrier discrimination and averting an untold number of individual complaints alleging violations of §§ 201 and 202 of the Communications Act of 1934 ("the Act").[8] Administrative costs will only increase if the Commission substitutes case-by-case enforcement of §§ 201 and 202 for an affirmative resale policy, as suggested in the *First R&O*.[9]

The record also lacks any evidence of the resale rule imposing costs on any other party. Some commenters assert that the resale rule "could harm the market's development by discouraging buildout and innovations."[10] The Commission has adopted rules specifically designed to encourage buildout of a licensee's system in an effort to ensure that those who are awarded spectrum use it. These rules impose onerous penalties on licensees who fail to build out their systems within a certain time period, including license forfeiture.[11] No economically rational licensee subject to buildout requirements will risk forfeiture of a license worth, perhaps, millions of dollars merely to resell the services of its facilities-based competitor. Of course, even if such risk-taking was likely, a much narrower sunset provision that applied only to facilities-based competitors would remedy any threat to buildouts.[12] Furthermore, as noted above, the Commission has repeatedly recognized that resale encourages, rather than stifles, marketplace innovation.

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[8] *Id.*; *see also id.* at 283 (widespread resale will prevent discrimination); *Notice of Apparent Liability for Forfeiture and Order to Show Cause in the Matter of AT&T Communications*, FCC 94-359 (Jan. 4, 1995) (unrestricted resale serves as a "vehicle for efficient enforcement" of the Act).

[9] *First R&O* at ¶ 22.

[10] *Id.* at ¶ 9 (footnote omitted).

[11] *See, e.g.*, 47 C.F.R. § 24.203(a).

[12] *E.g., First R&O* at ¶ 28.

Comments that "unrestricted resale will reduce the value of spectrum at future auctions" also lack merit.[13] For years, the Commission has acknowledged that the option of resale allows more telecommunications providers to enter the marketplace and increases competition. In addition, once they have established themselves, many resellers will seek to become facilities-based carriers. For example, MCI began as a reseller of wireline services, obtained a foothold in the market, and then began constructing its own facilities. Increasing the number of telecommunications providers thus benefits the Commission's auction processes and the benefits derived therefrom -- the more parties who bid at auction, the higher the value of spectrum is likely to be.

Some commenters also claim that carriers will be left with stranded capacity if they are required to build facilities for a reseller and the reseller leaves the system.[14] The *First R&O* accurately deflates this contention, noting that the resale rule does not mandate foolish investments or prohibit carriers from requiring insurance against risk of loss.[15] It simply requires carriers to permit their services to be resold and to offer their services under the same terms and conditions they offer to other similarly-situated customers.

While the *First R&O* fails to identify a single cost of maintaining the resale rule, it completely ignores the substantial cost to small business of eliminating the rule. The *First R&O* acknowledges that most if not all wireless resellers are small businesses.[16] As small businesses,

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[13] *Id.* at ¶ 9.

[14] *Id.*

[15] *Id.* at ¶¶ 13 and 18.

[16] *Id.*, Appendix B at 5.

these entities generally lack the resources to file a complaint with the Commission every time they encounter unjust or unreasonably discriminatory resale restrictions. The time delay alone of waiting for the FCC to decide a complaint can drive a reseller out of business.[17] A blanket resale policy is the only protection afforded these firms against resale abuses. Yet, the Commission fails to acknowledge that there is any cost at all of its decision to revoke the resale rule in favor of individual complaints filed under §§ 201 and 202 of the Act.[18] This omission is fatal to the *First R&O*'s cost-benefit analysis.

In sum, the record before the Commission provides no support for the Commission's conclusion that the costs of a resale rule outweigh the benefits. Even if the benefits of a resale rule generally diminish as markets become more competitive,[19] the administrative costs saved by the rule would alone warrant its retention. Moreover, as discussed below, CMRS markets have not reached a state of perfect competition.

A. CMRS Markets Are Not Now and Will Not Soon Be Perfectly Competitive

The Commission's assumption that CMRS markets will be fully competitive in five years provides the foundation for its revocation of the resale rule. The Commission's own data, however, demonstrate the fallacy of its assumption.[20] According to the Notice of Inquiry in GN

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[17] The Commission has previously recognized that delays work to the carrier's advantage when they have the effect of postponing service to a competitor's subscribers. *Declaratory Ruling in the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, FCC 87-163 at ¶ 22 (May 18, 1987). The Commission has also recognized its duty to prevent this type of anticompetitive conduct. *Id.*

[18] *First R&O* at ¶ 22.

[19] *Id.* at ¶ 14.

[20] Connecticut Telephone did not previously submit the data cited in this section because the Commission gave no indication that it was considering sunsetting the resale rule for all CMRS

Docket 96-113, the telecommunications market as a whole is becoming more and more concentrated in the hands of a few big businesses.

> For example, [small business] sales and employment data for the period 1989-1991 indicated that while the total number of small telecommunications enterprises had increased, cumulative market share possessed by those businesses decreased significantly. Stated differently, bigger businesses were commanding larger portions of telecommunications revenues. Of a total of 990 firms in ... [radiotelephone industries] in 1989, 971 firms with 249 employees or less possessed a 35.1% cumulative market share in 1991, compared to 927 firms in the same employment size range with a cumulative market share of 52.5% in 1989. In contrast, there were a total of 19 firms with over 249 employees commanding a 64.9% cumulative market share in 1991, compared to 21 firms of the same size range with a cumulative market share of 47.5% in 1989. [Similarly,] of all 1,347 local exchange carriers (LEC) filing ... TRS Fund Worksheets, the top fifth represent 98% of all LEC revenues; of all 97 interexchange carriers (IXC) filing TRS Fund Worksheets, the top fifth represent 99% of all IXC revenues.[21]

The wireless market has experienced this intense concentration of market power as well:

> ten large companies -- the six RBOCs, AirTouch (formerly owned by Pacific Telesis), McCaw (now owned by AT&T), GTE and Sprint -- control nearly 86 percent of the cellular industry.... [N]ine of these ten companies control 95% of the cellular population and licenses in the 50 BTAs that have one million or more people.[22]

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providers. The Interconnection Notice of Inquiry did not propose a time limitation on the resale rule as applied to non-facilities CMRS providers. *See, generally, Notice of Proposed Rulemaking and Notice of Inquiry in the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, 9 FCC Rcd 5408 (1994). The Second Notice of Proposed Rulemaking discussed a time limitation only on the obligation of facilities-based CMRS providers to resell to competing facilities-based providers. *See First R&O* at ¶ 6. Entirely different competitive considerations, requiring different evidence, impact on the decision to sunset the resale rule altogether.

[21] *See Notice of Inquiry in the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, FCC 96-216 at n.17 (May 21, 1996) ("*NOI*") (citations omitted).

[22] *Id.*; *see also Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 95-317 at n.20 (Aug. 18, 1995) (acknowledging "trend towards concentration of the cellular business in the hands of telephone companies").

At the same time, the availability of credit to small businesses is steadily declining.[23] These trends, which clearly illustrate a market becoming more and more concentrated in the hands of a powerful few, stand in stark contrast to the Commission's assumption that CMRS markets will achieve perfect competition in five years.

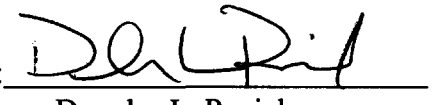
The realities of the marketplace belie the Commission's assumption that CMRS markets will reach perfect competition in the timeframe suggested by the Commission. Sunset of the resale rule, therefore, will only exacerbate the anti-competitive trends that currently dominate the wireless resale marketplace.

III. CONCLUSION

For the reasons stated herein, Connecticut Telephone respectfully requests the Commission to rescind its decision in the *First R&O* to sunset the resale rule in five years.

Respectfully submitted,

CONNECTICUT TELEPHONE AND COMMUNICATION SYSTEMS, INC.

By: 

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August 23, 1996

[23] *NOI* at ¶ 9.